

United States District Court  
Southern District of Texas  
FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

AUG 02 2007

Michael N. Milby  
Clerk of Court

ALBERTO RODRIGUEZ

VS.

THE PICTSWEET COMPANY

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§

CIVIL ACTION NO. **B-07-113**

**PLAINTIFF'S ORIGINAL COMPLAINT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Plaintiff Alberto Rodriguez files this Original Complaint, seeking to recover compensatory damages from Defendant The Pictsweet Company.

**I.**

**PARTIES**

- 1.1 Plaintiff is an individual residing in Brownsville, Cameron County, Texas.
- 1.2 Defendant The Pictsweet Company is a Delaware corporation with its principal office in Tennessee. It may be served through the registered agent it designated with the Texas Secretary of State, CT Corporation System, 350 N. St. Paul Street, Dallas, Texas 75201.

**II.**

**JURISDICTION AND VENUE**

- 2.1 This Court has diversity jurisdiction because this lawsuit involves a dispute between a Texas resident and an out-of-state corporation, and the amount in controversy exceeds \$75,000.00.
- 2.2 Venue is proper in the Southern District of Texas because Defendant is subject to jurisdiction in the Southern District of Texas.
- 2.3 Venue is proper in the Southern District of Texas because this lawsuit arises out of an incident that occurred in the Southern District of Texas.

- 2.4 Defendant is subject to personal jurisdiction in Texas.
- 2.5 Defendant has systematic contacts with the State of Texas.
- 2.6 Defendant operates one or more facilities within the Southern District of Texas, including a facility in Monte Alto, Texas.

### **III.**

#### **FACTS**

- 3.1 Defendant has a facility in Monte Alto, Texas.
- 3.2 On or about August 2, 2006, Plaintiff traveled to Defendant's facility in Monte Alto, Texas.
- 3.3 On or about August 2, 2006, Jesus Gastelum was employed by Defendant.
- 3.4 On or about August 2, 2006, while in the course and scope of his employment with Defendant, Mr. Gastelum was operating a forklift and caused a bin to fall and strike Plaintiff in the head.
- 3.5 Plaintiff suffered injuries as a result of the bin striking him in the head.
- 3.6 Plaintiff's injuries include, but are not limited to, a concussion, a brain injury, and a herniated disc.
- 3.7 Given the manner in which the incident occurred, Plaintiff has reason to suspect that Defendant did not adequately train and supervise Mr. Gastelum. However, Plaintiff needs to conduct discovery to discover additional facts before making any affirmative statements on the training and supervision issue.

### **IV.**

#### **NEGLIGENCE**

- 4.1 Defendant The Pictsweet Company and/or its employees were negligent in the following respects:
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- a. In failing to operate the forklift in a safe and prudent manner;
- b. In setting up the jobsite in a manner that necessitated driving a forklift in an area where it could contact straps connected to bins;
- c. Upon information and belief, in failing to adequately train and supervise its employees.

Each of these acts and/or omissions were proximate causes of Plaintiff's damages.

- 4.2 Defendant The Pictsweet Company is vicariously liable for the acts of its employees under the doctrine of respondeat superior.

## V.

### DAMAGES

- 5.1 As a direct and proximate result of the negligence of Defendant and Defendant's employees, Plaintiff sustained the following elements of damages, for which he seeks to recover compensatory damages in this lawsuit:
- a. Medical expenses, past and future;
  - b. Lost wages and lost earning capacity, past and future;
  - c. Physical impairment, past and future;
  - d. Pain and suffering, past and future; and
  - e. Mental anguish, past and future.
- 5.2 Additionally, Plaintiff's treating neurosurgeon has recommended that he undergo surgery to his cervical spine. This surgery will result in disfigurement in the form of a scar. Plaintiff seeks to recover damages for disfigurement in the past and future as well.
- 5.3 Plaintiff's damages exceed this Court's jurisdictional minimum.
- 5.4 Plaintiff also seeks to recover prejudgment interest, postjudgment interest, and court costs.

**VI.**

**JURY DEMAND**

6.1 Plaintiff hereby demands a jury trial.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Alberto Rodriguez prays that the Court enter judgment against Defendant, The Pictsweet Company, for compensatory damages, together with prejudgment interest, postjudgment interest, and court costs.

RESPECTFULLY SUBMITTED,

THE AMMONS LAW FIRM, L.L.P.  
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